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GEORGIA'S PROPOSED PLAT LAW

by C. R. Roberts

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GEORGIA'S PROPOSED PLAT LAW

C. R. Roberts

It is always a difficult task to address a professional group such as this. Often there are members of the group that know more about the subject matter than the speaker. However, where the speaker is associated with an allied profession, a paper may effectively clear some points of mutual interest.

I quote J. K. Finch, C. E., Author of "Plane Surveying" "surveying is probably one of the oldest mathematical arts". This statement is probably true, since research in this field shows that private ownership and transfer of land ranges back into antiquity. History records such transactions in Egypt and Babylonia 3,000 B.C. In the Bible we find in Genesis Book 23 that Ephron sold to Abraham a burial plot for his wife, Sarah, for 400 shekels of silver, current money with the merchant.

The first surveys in the State of Georgia were made in 1755. Prior to 1755 or the period between 1732 - 1752 King George II granted lands to the trustees for establishing the Colony of Georgia and settlers under General James Oglethorpe constituted the first colony of white men in Georgia. General Oglethorpe's Surveyor-General Henry Yongo platted parcels under proprietorships which were more or less lease arrangements with no fee-simple title. Fee-simple titles to lands were not given until 1753.

The position and title of Surveyor-General was well known in the Province of Georgia before the Revolution, and the duties of the office were referred to in several acts passed by the General Assembly of the Province. Perhaps the act which most clearly defined some of his duties and his conduct of the office was one passed on March 25, 1765 and later renewed in 1768, 1770 and 1773. That act which related to grants of land in the Province of Georgia by the Governor of the Province of South Carolina, required that all such lands "be re-surveyed by the Surveyor-General of the Province of South Carolina".

After the Revolution, The General Assembly of the State of Georgia passed several Blanket Acts (Acts of 1777, 1778, 1781 and 1784) continuing in force all laws of the Province except such as were nullified by the Revolution. Thus, the Surveyor-General of the State continued to be a public officer and his duties continued to be the same as those of the Surveyor-General of the Province.

Section 3 of the Act of September 16, 1777, entitled "An Act for Opening a Land Office" reads "That all surveys of land which are legally made and returned into the Surveyor-General's office shall be recorded, and a certified copy thereof delivered to the Attorney for the State, so that fiats may be by him prepared and delivered without delay to the secretary's office, that grants may be made out and figured for the said lands, agreeable to the Constitution, which said land grants shall be registered in the County where the land lieth and in the State Capitol".

From 1777 through 1832 various means of distributing land in Georgia were used. Bounty grants in Franklin and Washington Counties were enacted by the General Assembly. 287.5 acres for enlisted men and 575 or more acres for officers, no record being kept as to their service or former residence.

This was followed by Head Right Grants in 1783, which specified that the Master or Head of a family could receive 200 acres of land provided he cleared and cultivated three out of each 100 acres. This law with amendments and renewals was not repealed in its entirety until August 1909. Grants by purchase followed, whereby a free, white, married man who was Master or Head of a family could purchase up to 800 acres of land. On the basis of 50 acres for each member of his family or slave. This purchase with his own Head Right of 200 acres could not exceed 1,000 acres of land. The purchase price being one shilling per acre for the first 100 acres, 1 Shilling and six Pence for the second 100 acres, two Shillings for the third 100 acres, 2 Shillings six Pence for the fourth 100 acres and so on in progression.

The first Land Lottery was held in 1805, 202-1/2 acres land lot for $8.10 per draw and $19.60 per draw for a 490 acres land lot. The second Land Lottery was held in 1807, the third in 1820, the fourth in 1821, the fifth in 1827 and the sixth known as the "Cherokee Land and Gold Lottery", in 1832. It is interesting to note that male and female idiots, lunatics or insane persons, deaf or dumb or blind persons over 10 years and under 18 with 3 years residence in Georgia had the right of 1 draw each. By this time the "Gold Lots" of 40 acres or the Land Lots of 160 acres were $18.00 per draw for either size Land Lot.

At this point it may be well to state that the legal and surveying professions are related, not only in antiquity, but in the application of business principles to varying conditions affecting land in our daily routine.

In this age, the many and varied activities of industry demand specialization which, with its concomitants, accuracy, efficiency and precision provides a satisfactory solution to the problems of business life. This holds true in land surveying and title insurances practices.

The transfer and encumbrancing of real property, the insurance of title, the making of ground surveys, and the preparation of record descriptions demand particular care in all their phases in order to escape the many pitfalls which give rise to misunderstandings, arguments, lawsuits, and financial loss.

Of all the items entering into a project involving real property, probably the least considered are the survey of the property and its description, although they are of the utmost importance. The Property Survey is The Physical and the Description the Written Record of the position or location of the parcel of land dealt with in the transaction. No accurate information may be had nor specific knowledge obtained in land holdings and transfers without an accurate survey and its associated description.

One does not take a watch to a Blacksmith for repair, neither should one attempt to get a survey made or a description written of property unless made by a person who is qualified by training and experience and registered in compliance with the law.

Some years ago the Life Insurance Companies requested the Title Companies to insure against encroachments or overlapping; deficiency in the quantity of ground; discrepancies in boundaries; (covering questions of location, boundaries and area) and check for accuracy of plats of surveys of record, since a title lawyer in insuring a title to property in a platted subdivision has to rely to a large extent on the survey as evidenced by the recorded plat and are dependent upon actual surveys for determination. These requests naturally imposed an additional burden on the title lawyers and resulted in the issuance of a new form of policy which calls for an additional premium commensurate with the extra hazards assumed and additional cost to the insured.

Since the advent of the Life Insurance Companies into money lending on new construction, etc. several inspections are required to be made by the Surveyor, at least 3 and sometimes 4. To safely cover this risk, they insist that a survey must be made by a Registered Land Surveyor, due to the fact that the courts only recognize as expert witnesses in this field, a Surveyor that has complied with the Registration Laws of the State.

The rule relative to surveys and inspections by Registered Land Surveyors adopted by the Life Insurance Companies is:

FIRST: Foundations. In place of all buildings erected or to be erected or the forms in place for such foundations, including garages.

SECOND: Dimensions. Dimensions of the lot or tract of land and of all buildings erected or to be erected.

THIRD: Setback Lines. The front set-back or building line and distances from buildings to side lines.

FOURTH: Porches. Porches, Stoops, Eaves and/or Overhangs.

FIFTH: Fences in Place.

SIXTH: Easements. All easements known or apparent from surveys.

SEVENTH: Encroachments. All encroachments and overlaps by improvements belonging to the premises or adjoining premises.

It will be readily observed that a survey of this nature which may be designated as a title, property or loan survey serves no purpose for title insurance unless it contains the seven items of information tabulated above and made as required, by a Registered Land Surveyor.

I have been asked several times for the definition of a map or plat, especially since so much of it is mentioned in the proposed Plat Law. The best definition I know of is the one given by the General Land Office now the Bureau of Land Management under the U. S. Dept. of the Interior. "A map or plat is the graphic representation of a survey made in the field. The purpose of a map or plat is to show the courses and lengths of survey lines between established monuments, the boundaries, description and area of each tract of land and, as far as practicable, a delineation of the important relief, drainage, and culture." From this definition one can conclude that a map or plat serves as the legal basis for all transactions, in the majority of cases.

In an early court decision in the State the court ruled that when lands are granted according to an official survey authorized by the Surveyor-General, the plat of the survey, with all its notes, lines, descriptions and landmarks becomes as much a part of the grant or deed by which lands were conveyed, and controls so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or grant. In another case the court ruled that it is a principle of law that corners once established, designated and used to mark land boundaries, cannot be corrected, changed, destroyed or defaced as long as there are existing valid rights based upon said corners, and if said corners have been used on a map or plat recorded. So, it is interesting to note that regardless of the fact that extreme accuracy was not an important factor in executing the early surveys and that there is considerable difference in many instances between the original record and the actual distances and courses of the lines on the ground connecting the established monuments; the original surveys are still serving the purpose for which they were made, that is, to mark the boundaries of the land concerned.

The advancement made in accuracy in connection with executing the survey of lands is best illustrated by the specifications for that factor contained in the early regulations compared with the present-day standards.

The Ideal Lay-Out for conveyance of land is the Recorded Subdivision Map or Plat. Most of the information required for the definition of boundaries is shown on the record map together with much additional data, and parcel delineation is more perceptible than the visualization of a Metes-and-Bounds Description. The description of a lot on the plat or map, is simplicity itself, merely requiring a statement of the lot number, the block letter, the land lot, district and section number, the name of the County, the Plat Book number and page in which the map or plat is recorded. Even the division of the original lots into two or more parcels is easier, for ties and distances are readily referenced to the lot boundaries of the map or plat. An additional advantage is that proper reference to the map or plat in a document incorporates in the document all the information on the map or plat which may be pertinent to the location of the property, thus eliminating a long and complicated recital of ties, calls, and dimensions in the description.

A description based on mathematical foundation and a series of fixed bearings and distances from a beginning point or line common to a similar description of adjoining property, may not require additional calls or ties for title safety. However, the great majority of descriptions are made safer by reciting calls and ties to monuments of record. This prevents overlapping or gapping of adjoining properties and shares the burden of boundary identification with the adjoining descriptions already of record.

Title lawyers by their very nature as investigators and insurers of titles are especially fitted with their legal departments and engineering staffs to prepare and interpret descriptions and give accurate advice and to check on the location methods of land surveys. They are also familiar with the variety of needs of the parties to a transaction and can determine the manner of procedure required for final and satisfactory location of boundary lines.

Also very necessary, especially in localities not served by title companies or title lawyers are the services of registered land surveyors who are experienced and familiar with the intricacies and oddities of surveys, descriptions and titles. The Great variety of dimensions, designations, and relationships of boundaries creates a corresponding variety in the type and form of descriptions that will define correctly such boundaries. These descriptions must also conform with title, and provide sufficient data or references for a correct location survey.

The scope of this paper will not permit an investigation of the full technic of property surveying or description writing, but a few broad applications have been stated. The conclusions presented have been based on legal and surveying principles.

From the standpoint of the landowner, the Location Survey is probably more important than the title description, but the title lawyer subordinates the survey to the description. The record title is evidenced by a permanent document usually recorded, which in itself does not change, and may be used at any time for comparison or check with any other related instruments.

In 1947, a group of registered land surveyors in the state who recognized the need for some control over the land surveying profession, since many current practices in land surveying were crude and outdated due to instrument work becoming increasingly accurate through the years, and recording not keeping pace with the times and realizing the need for improvement was immediately apparent to anyone retracing a previous survey, formed the Georgia Association of Registered Land Surveyors, Incorporated. The Preamble of their Constitution reading thus: "Recognizing that service to society, to State, and to the profession is the premise upon which individual

opportunity must be built, The Georgia Association of Registered Land Surveyors does hereby dedicate itself to the promotion and protection of the profession of land surveying as a social and economic influence vital to the affairs of man and of the community".

Many of you are probably not aware of the fact that considerable effort has been made by The Georgia Association of Registered Land Surveyors, Inc. and influential individuals during the past several years to work out a suitable non-controversial and uniform plat law. Standardizing on such a simple, practical plan would put an end to haphazard work; eliminate confusion; protect the land owner and the community; and increase the prestige of the profession. This legislation, when enacted into law, would regulate the making and filing of all maps and plats of surveys in each County of the State; would provide penalties and would repeal an act approved in 1933 regulating the preparation, contents and recording of maps, plats and sketches of surveys; repeal conflicting laws, etc. The 1933 Act provides for the writing of descriptions of property to be added to the map, plat or sketch by the surveyor. Also, it provides the Act to become effective only when recommended by the Grand Jury of the County; the Act further provides for approvals by the City Engineer if such tract of land lies within the corporate limits of any incorporated town or city and the approval of the County Surveyor if such tract lies without the limits of any incorporated town or city. There is no provision that the map, plat or sketch be made by a Registered Land Surveyor, because there were none at this time. Still, not all the cities had City Engineers and only 50% of the counties had county surveyors. But, the Act does provide that before a map, sketch or plat be accepted for public record by the Clerk of the Superior Court of the County, it must be made on linen or tracing cloth and with permanent India ink. This law, in the opinion of many legal authorities, is "old-fashioned and no longer suitable or intended for the people at large". It is a misconception of the standards in use at the present time. It is a law in name only. The Act should be amended and brought up-to-date or repealed and a more suitable law written in the statues to conform to present-day standards and practices.

The ultimate purpose of Georgia's Proposed Plat Law as sponsored by the Georgia Association of Registered Land Surveyors, Inc. is to safeguard life, health and property and to promote the public welfare; to emphasize that any person in private capacity practicing or offering to practice professional land surveying in the State of Georgia shall be required to submit evidence that he is qualified so to practice and shall be registered in this State as provided for by law. The State Registration Act for "Engineers and Land Surveyors" defines the term "Land Surveyor" as a person who engages in the practice of land surveying; and the practice of "Land Surveying" within the meaning and intent of the law includes the surveying of the areas of the earth's surface for their correct determination and description, and for conveyancing and recording, or for the establishment or re-establishment of land boundaries and the plotting of land and sub-divisions thereof. The Penal Provisions under the law are that any person who shall practice or offer to practice "Land Surveying" in the State without being registered or exempted in accordance with the Provisions as set forth in the Act, shall be prosecuted before a court of competent jurisdiction and if found guilty, shall be punished as for a misdemeanor and subject to a fine of not more than $500.00 and imprisonment of not more than three months. (Sec. 84-9937, Acts of 1945, P. 294-311.)

Therefore, in complying with the Registration Laws of the State of Georgia

and the principles of law in general, the Proposed Plat Law reads: "Section 3. No map or plat shall be accepted for public record unless signed and sealed by a registered land surveyor." Many of us have experienced the rule rather than the exception that surveys made by unqualified surveyors are cheap surveys, poorly made and usually prove to be uneconomical because they must be completely duplicated when further work is to be done in the same area. The enactment of the Proposed Plat Law for the State would be a means of realizing economies by eliminating repitition. Not only are property corners inadequately monumented and, therefore, susceptible to loss under methods in common use by unqualified Surveyors, and out-dated methods, but satisfactory description of permanent points of beginning are so unusual that the accurate determination of property boundaries by resurvey is seldom possible at times. To better illustrate this point I quote a description made by a Surveyor some years past. He was apparently describing a ledge, "It cropped out apparently a little S. E. of a Pt. where the Arc. of the Orbit of Venus bisects the Milky Way, and ran due E. 80 Chains, 3 Links and a Swivel; thence S. 15 Paces and 1/2 to a blue spot in the sky, then proceeding westwardly 80 Chns. 3 Lks. and 1/4 to a fixed star; thence N. across the ledge to the Pt. of Beginning."

This is an example of one of the many descriptions that have been hastily and inefficiently written (and apparently markers carelessly placed) that it is impossible to follow the previous man's work.

As a City or County develops, problems arise which can be solved only by the intensive study of its physical attributes, if not only for this reason alone, there should be readily available, accurate and up-to-date information concerning land ownership in sufficient detail to enable accurate surveys of any project contemplated. Unquestionably, it is true that some of this information is continually being obtained for specific purposes, but is unavailable for other particular purposes and uses. Furthermore, the cost of compiling information at one time, by one organization, prohibits such an undertaking and the only recourse would be the enactment of a Uniform Law regulating the making and filing of maps and plats for public record, setting out certain minimum requirements in order to provide permanent control of maps and plats, to establish a basis for referencing surveys, etc.

Although the Proposed Plat Law has not been enacted into law as of to date, the following statistics indicate clearly that the proposal has had tremendous effect upon the surveyors of the state.

In January 1952 when the Plat Law known as H. B. 869 was first introduced and later met its defeat in Committee, the number of Registered Land Surveyors was 474 in 110 Counties. The number of Counties without a Registered Land Surveyor was 49. In January 1953 when the Plat Law known as H. B. 101 was again introduced and later withdrawn from the Committee in order to make additional changes, the number of Registered Land Surveyors were 576 (or an increase of 102 in 12 months) and the number of Counties without a Registered Land Surveyor decreased to 34. (15 Counties which previously had no Registered Land Surveyors were now proud to have them.) In November 1953 when the Plat Law known as S. B. 163 was again introduced and was "adversely" reported by the Committee, the number of Registered Land Surveyors was 930 in 152 Counties, leaving only seven Counties in the State without a Registered Land Surveyor.

These amazing figures show an increase of 456 Registered Land Surveyors in the State's registration records since introduction of the Proposed Plat

Law and an increase of 42 Counties with Registered Land Surveyors (these Counties having had no Registered Land Surveyors previously).

Progress can be made only with Registered Land Surveyors and Registered Engineers using their influence to bring about a change in 1955 (which is the next session of Georgia's General Assembly). With these records in view, I feel that the efforts of the Georgia Association of Registered Land Surveyors, Inc. as an organization for the past six years has not been in vain.

PROCEEDINGS-SEPARATES

The technical papers published in the past twelve months are presented below. Technical-division sponsorship is indicated by an abbreviation at the end of each Separate Number, the symbols referring to: Air Transport (AT), City Planning (CP), Construction (CO), Engineering Mechanics (EM), Highway (HW), Hydraulics (HY), Irrigation and Drainage (IR), Power (PO), Sanitary Engineering (SA), Soil Mechanics and Foundations (SM), Structural (ST), Surveying and Mapping (SU), and Waterways (WW) divisions. For titles and order coupons, refer to the appropriate issue of "Civil Engineering" or write for a cumulative price list.

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a. Beginning with "Proceedings-Separate No. 200," published in July, 1953, the papers were printed by the photo-offset method.
b. Presented at the Miami Beach (Fla.) Convention of the Society in June, 1953.
c. Presented at the New York (N.Y.) Convention of the Society in October, 1953.
d. Beginning with "Proceedings-Separate No. 290," published in October, 1953, an automatic distribution of papers was inaugurated, as outlined in "Civil Engineering," June, 1953, page 66.
e. Discussion of several papers, grouped by divisions.
f. Presented at the Atlanta (Ga.) Convention of the Society in February, 1954.

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